P35

R.D. File No. 485-

1939

Collection No.

Mysore Residency

22/7/47

Pros. / Serial Nos. 1 - 5

(K)

Subject.

Filing by Foreign Companies of Cash Reserve Statements under Sec: 277 of the Companies Act 1913.

Previous References.

Later References.

S. 97—(Green).

MFP—695 S&P—(M-1331)—17-12-38—100,000.

# NOTES AND PRECIS.

The Civil and Military Station Branch of the Mysore Bank has been called upon by the Registrar of Joint Stock Companies to submit the Cash reserve statements for the period from 10-8-1937 up to date, as required by section 277L of the Companies Act. The contention of the Company is that this section is not applicable in their case.

The Mysore Bank is a Company incorporated in Mysore State, and has a place of business in the Station. The poin for consideration is whether the provision of law quoted above is applicable to such Company.

The framers of the Act have not overlooked the existenc in British India of mere places of business of Companies incorporated abroad. They have laid down separate provisions applicable to such Companies in Part X of the Act: (Sections 277 to 277E). It appears to be a clear rule regarding the interpretation of this Statute that when special provisions have been separately laid down in regard to certain classes of Companies, the general provisions laid down in the rest o the Act in regard to Companies in general will not be applicable to such class. Companies incorporated outside the Station will have to comply with the provisions only of Chapter X,and, of those provisions in the rest of the Act which refer in specific terms to Companies incorporated outside the Station. Please see subsection (2) of section 277G The report of the Select Committee said regarding section 277G: "We consider that this section should apply to companies incorporated outside British India. We have postponed its operation for two years to afford companies time to make necessary arrangements for compliance with the section". It appears, therefore, that the contention of the Company is right and the requirements as to the maintaining of a Cash reserve and the filing of the statements with the Registrar are not applicable to their case. But the Registrar will

certainly

certainly have had strong reasons when he over-ruled their contention that they need not comply with the provisions of section 277L(1). Perhaps the papers may be sent u/o. for favour of remarks.

The next point is the provision under which Government can be called upon to interfere. If the Company has any grievance regarding the orders of the Registrar, it appears their remedy will be to go to Court and ask for a declaration that the section is not applicable to them, and that they cannot be required to comply with its provisions. Registrar may perhaps be requested kindly to offer remarks on this aspect of the case also.

Submitted for orders.

ASR
29.7.39

Secretary 5. may be sent u/o to Registrar. Could he also let us know why the objection put in by the Company on 27.10.1937 was not overruled till 26.6.1939? Incidentally it does not appear that the filing of cash reserve statements for a past period will be of much avail practical advantage

HRulz
31/7/39.

Registrar u/o

Registrar of Joint Stock Companies, Ctr. Station, Bangalore.

u/o. No. D. 7618-39/Judl., dated 31st July 1939.

Part XA is a special provision of the Act applicable to Banking Companies. It appears that the definition of a 'banking company' in Section 277F cannot be restricted to apply only to companies incorporated in the Station unless the word 'company' in the term "A banking company" is - construed as strictly conforming to the definition in clause (2) of sub-clause (1) of Section 2. That such a restriction cannot be placed on the definition is clear from sub-section (2) of Section 277G which contemplates its application to foreign companies also. Consequently it seems to me that the whole of Part XA is applicable to all companies carrying on banking business in the Station. This view finds support in the notes under Section 277F of the Companies Act by Sir N.N. Sircar and Mr. S.C. Sen. "Section 277F to 277N have been introduced by the Amending Act of 1936. These sections - relate to and make provisions for banking companies in the Act. The provisions of these sections, except those contained in sections 277K and 277L apply to <u>all banking companies as defined in the Act</u>. As to Scheduled Banks as defined by Sec. 2 of the Reserve Bank of India Act, they are not affected by the provisions of Sections 277K and 277L ...."

Page 679 ¶
Book published

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The need for the introduction of legislation in this respect can be gathered from the following extracts. The Central Banking Enquiry Committee in their report in para 451 observe as follows:- "From a study of the literature relating to the treatment of non-national banks in other countries as far as available, we find that provision exists in the laws of various countries for regulating foreign banks by means of licences granted by some prescribed authority in the country.....The introduction of a similar system is, in our opinion, necessary in India partly in the <u>interests of depositors</u>, partly for ensuring the grant of reciprocal treatment in foreign countries to Indian banks and partly for giving the Reserve Bank some control over the banks operating in this coun In para 673 they observe

that the foreign banks operating in India should be brought within the purview of the Act to the extent indicated in their report and provided for in the Act. In his report containing the recommendations for amending the Indian Companies Act, Mr Susil C. Sen states that provisions should"be made to make it obligatory on all banking companies carrying on business in British India, other than Scheduled Banks as defined in the Reserve Bank of India Act, to maintain in cash or in Government Securities by way of reserve a sum of not less than 5 per cent. of the time and 10 per cent. of the demand liabilities. In my opinion this is absolutely a necessity for the protection of the interest of the depositors." Mr. Sen - recommended the provisions to regulate banking companies - mainly to safeguard the interests of the depositors (vide Chapter XII of his report).

The introduction of Part XA in the Act being obviously for the protection of depositors, if foreign banks are - considered to be not subject to its restrictive provisions, banks formed in Indian States where similar laws may not be in force, can, with impunity exploit the position by opening branches here and receiving deposits and thereby defeat the only object of this wholesome legislation. The tale of - depositors in the Travancore National & Quilon Bank Ltd., the City Bank Ltd., and etc., bears ample testimony regarding the necessity of control of such foreign banks.

In this connection I also consulted the Registrars of some of the provinces in British India about the practice in those places. The Registrars of Bombay and Calcutta state that the provisions of Sec. 277L are applicable to foreign banks, but the Registrar of Madras holds the contrary view. In fact, the Registrar of Companies, Bombay, asked the Provincial Bank of India, a company incorporated in the Station and having branches in the Bombay Presidency to file the Cash Reserve statements in his office. I also learn that in Mysore, foreign banks are required to comply and are

complying with Sec. 277L of the Act. In the Station too all other foreign banks except the Bank of Mysore have been complying with that section from the time it came into force here. In the circumstances, I consider that the Act does not contemplate the exemption of foreign banks from compliance with Sec. 277L.

I think it was incumbent upon the Bank of Mysore to comply with the orders of the Registrar until the order was either modified or withdrawn. The mere fact that steps - were not taken earlier to enforce compliance with the order is no argument for condoning the default. If such a - procedure is to be followed, it will amount to placing a premium on defaulters as against those complying with the Act without demur. The records in the office should be complete,and there is,besides no provision under which the Registrar can exempt a company from filing the statements which they are bound to file in this office.

I agree with para 4 of office note. There is no provision in the Act giving companies a right of appeal to the Government from the orders of the Registrar. There is also no statutory provision under which the company can move the Court for a declation; but perhaps the Court may in exercise of its inherent powers make a declaration. The only other way by which the Company can test the correctness of the orders of the Registrar is by refusing to - comply with his order, and to plead the inapplicability of the section when the company is prosecuted under Sec. 277L(4) of the Act. Another procedure appears to be for the company to question its applicability if the Registrar takes action under Sec. 249A of the Act.

The Pleader for the Bank asked for time to enable him to place authorities before the Registrar in support of his view but those authorities were not forthcoming. After waiting for a couple of months or so I started - consultations with the Registrars of Joint Stock Companies

in some of the major provinces which took some time. Some further time was also taken to see how the other companies reacted to the order to see if their Legal Advisers took a different view. Hence the apparent delay.

P. Mudaliar

REGISTRAR OF JOINT STOCK COMPANIE S

The Secretary to the Hon'ble the Resident in Mysore.

U.O.No. 313, dated the 4th August 1939.

7/8/39

OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE, BANGALORE.
Diary No 8216
File No.....

3. (1). We can argue either way from 277 G.

(2). I don't think it is a matter on which Govt. need give directions to the Registrar, & I think we may free the petitioner that Govt. does not propose to interfere with the action of the Registrar taken under the Act.

7/8/39.

Draft is submitted for approval with reference to para 13(2).

But the position, it is submitted, still does not appear to be so conclusive as enunciated by the Registrar. The reason for restricting the applicability of a "Banking Company" only to a company incorporated in British India is not the construction of the word "Company" occuring therein according to the definition in clause (2) of sub-clause (1) of section 2. The reason on the other hand is the scheme of the Act, from which the intention of the Legislature is to be inferred. The general provisions of the Act are not applicable to foreign companies having a branch in British Ind:

(the Station)

(the Station) because they do not fall within the definition of a "Company". What then is their position vis-a-vis the Companies Act. Part X is a special part framed to govern such foreign Companies. Such foreign Companies need comply only with the provisions contained therein and with those of the provisions which specifically mention foreign companies - 277G(2). In para 6 Sir N.N.Sircar's notes are quoted. The words "all Banking Companies as defined in the Act" even when underlined do not refer to banking companies whether incorporated in British India or outside. Part X would be meaningless if the provisions in the rest of the Act applied to Companies established outside British India.

Part XA is ofcourse for the protection of depositors. There is nothing in section 277L to restrict the Cash Reserve equivalent to the cash liabilities and demand liabilities in respect of persons residing within British India. It would be a reasonable interpretation to say that under section 277L, a banking company established in British India shall maintain a cash reserve in respect of all its liabilities, not only those in British India but outside British India. The territorial application of Acts cannot, it appears, be stretched so far as to say that "liabilities" used in this section means liabilities existing in British India.

Asstt 17
9.8.39

I rather agree: But in view of the difference of opinion among Bo & Indian Registrars, it would be as well to ask Political Dept. for a ruling: & we need not answer the Bank now

10/8/39

Draft to the Political Department is submitted for approval.

ASRao
11.8.39

12/8/39

13/8

S. N. (2): Issue

Dy.No. 10,138 S.N. 3

This case started from an appeal to the Resident by the Bank of Mysore. It is not known whether the Bank have yet filed the Cash Reserve Statements or they are awaiting the orders of the Resident on their appeal. It is for consideration whether the draft may now issue. Perhaps the ruling may be sent to the Registrar of Joint Stock Companies may see u/o] of the Political Department for information and guidance.

Draft submitted.

A.S.Rao
3.x.39

Better reply as in amended draft, the R of JSC seeing before issue.

H.Mulgaonkar
4/10/39.

Registrar of Joint Stock Companies, C. & M. Station Bangalore

u/o. No. D. 10, 138-39/Judl., dated the 4th October 1939.

Noted.

I have informed the local branches of the Bank of Mysore Ltd., and the Jwala Bank Ltd., the two foreign Banks, that they need not file in future the Cash reserve statements in this office.

P. Mulgaonkar

Registrar of Joint Stock Companies.

The Secretary to the Hon'ble the Resident in Mysore.

U.O.No.460, dated the 26th October 1939.

Submitted for perusal. The draft to the Bank of Mysore, it appears, may now issue. It may be seen that the Registrar is asking another foreign Bank also not to file in ~~future~~ future Cash Reserve Statements.

BsRao
26.x.39

Hallegan.
27/10/39

Secretary.

Sec'o (4): Issue

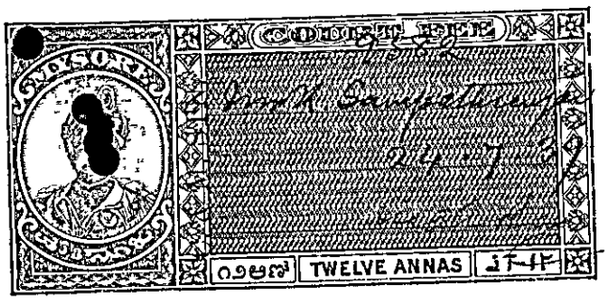
S. N. (5, issue

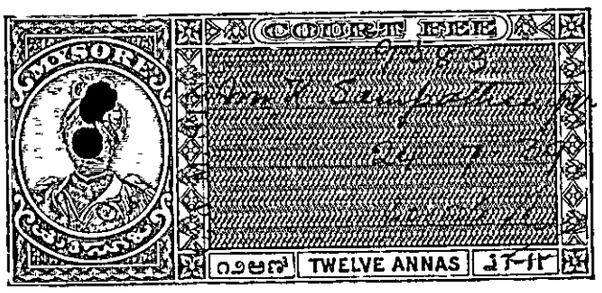
Accts

Record.

BsRao

# CORRESPONDENCE.






Secretary

BEFORE THE HON'BLE THE RESIDENT IN MYSORE,
C. & M. STATION, BANGALORE.

Presented in person by Mr. K. Sampathiengar, Manager, C&M. station Branch Mysore Bank. 24.7.39

Petitioner:-Bank of Mysore Ltd.,by its Manager Mr.K.Sampathiengar, C.& M.Station Branch, Bangalore.

Appeal against the order of the Registrar of Joint Stock Companies, C.& M.Station, Bangalore, passed on 26-6-1939.(Ref.No.195 File No.27 of 1937).

OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE, BANGALORE. 25 JUL 1939 Diary No. 7618 File No.

1. The Petitioner Bank who were called upon by the Registrar of Joint Stock Companies in C.& M. Station, Bangalore, by his order No.270 dated the 18th October 1937 to file Cash Reserve Statements under Sec.277 L.Cl.1 of the Indian Companies Act stated its objections on 27-10-1937

2. The Registrar of Joint Stock Companies by the accompanying letter dated 26-6-1939 over-ruled the objection and called upon the Bank to submit the Cash Reserve Statements with the requisite Filing Fees.

3. The Petitioner Bank submits that the order of the Registrar is without jurisdiction for the following among other grounds:-

(a) The Petitioner Bank is only a Branch of the Bank incorporated in Mysore State having its Registered Office at Bangalore City.

(b) Part X (a)which was added by the British Indian Act 22 of 1936 introduced for the first time by Sec.277 F.to Sec.277 M. Sec.277 A.Cl.2 expressly mentions that the provision thereof is applicable to a Banking Co. whether incorporated

in or outside C.& M.Station. There is no such provision in any of the other sections in this part and it is submitted that the inference is that the provisions contained in the other sections in part X (a) are applicable only to Companies incorporated within the Station.

(c) Though the word "EVERY" in Sec.277 L. is used qualifying the Banking Company, if Sec.277 K. is read because of the use of the word "EVERY" in that Section as well, it is submitted that the only meaning that could be placed on the use of the word "EVERY" is to denote emphasis and not to make it applicable to Banking Companies incorporated in or outside the Station. Any other conclusion would mean that the Petitioner Bank which is a Branch Company and which in the nature of things declares no profits or Dividends will have by virtue of the Statute to declare Dividends and PROFITS.

(d) In this context, the Debates of the Legislative Assembly and the object and reasons of the Select Committee may also be kindly referred in interpreting the Section.

4. Wherefore, on a consideration of all the circumstances, the Local Government may be pleased to rule that the provisions of Section 277 L. is not applicable to the Petitioner Bank which is a Banking Company incorporated outside the Station and hold that the Petitioner Bank is not liable to submit Cash Reserve Statements.

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The Petitioner Bank prays for an early ruling in this matter in view of the circumstance that the Registrar is putting pressure on the Petitioner Bank to comply with the provisions of Sec.277 L/1 of the Indian Companies Act.

For THE BANK OF MYSORE LTD.,
K Ramachandra Iyengar
Petitioner.
Manager, C. & M. Station Branch.

Bangalore,
Dated 21st July 1939.

Pt 2

5

R.Dis.No. F.485-39 Judl.

From

The Hon'ble Lt. Col. J. H. Gordon, C.I.E., O.B.E., M.C.,
Resident in Mysore.

F 16.8.39

To

The Secretary to His Excellency
the Crown Representative, Simla.

Dated Bangalore, the 16th August 1939.

Filing by Foreign Companies of Cash Reserve Statements under Section 277L of the Companies Act, 1913.

Sir,

I have the honour to request a ruling on the following case.

2. The Bank of Mysore is a Company incorporated in the Mysore State, and has a Branch in the Civil and Military Station Bangalore. The Registrar of Joint Stock Companies in the Station called upon the Branch to file cash reserve statements under Section 277L(1) of the Companies Act in force in the Station. The Bank of Mysore contend that this provision of law is not applicable to them.

3. The Registrar consulted certain Registrars in British India. The Registrars of Bombay and Calcutta stated that the provisions of section 277L are applicable to foreign banks, but the Registrar of Madras holds the contrary view. In view of this difference of opinion I shall be grateful for a ruling.

I have the honour to be,
Sir,
Your most obedient servant,

Lieut. Colonel
R E S I D E N T.

BJ

S. N. 3.

16

No.F.155-IB/39

From

The Secretary to His Excellency the Crown Representative.

To

The Hon'ble the Resident in Mysore.

Dated Simla, the 28th September 1939.

Filing by the branch of the Bank of Mysore in the Civil and Military Station, Bangalore, of cash reserve statements under section 277 L of the Indian Companies Act, 1913, as applied to that station.

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OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE, BANGALORE. 2 OCT 1939 Diary No. 10,138 File No.

Sir,

I am directed to refer to your letter R.Dis. No. F.485-39 Judl. dated the 16th August 1939, on the subject cited above, and to state that the Crown Representative is of the opinion that unless there is anything repugnant in the subject or context, a "banking company" means a "company" which carries on the business specified in section 277 F of the Indian Companies Act, 1913. A "company" as defined in clause (2) of section 2 of the Indian Companies Act, 1913, does not include a company incorporated in an Indian State. In the absence from section 277-L of a provision similar to that contained in sub-section(2) of section 277-G of the Indian Companies Act, 1913, the conclusion is inevitable that the "banking company" referred to in the former section does not include a company doing banking business which is incorporated in an Indian State. In the circumstances, the contention of the Bank of Mysore that the provisions of section 277-L of the Indian Companies Act, 1913, as applied to the Civil and Military Station, Bangalore, is not applicable to them, and the view held by the Registrar of

the

the Joint Stock Companies of Madras on the point are correct.

I have the honour to be,

Sir,

Your most obedient servant,

G. Stancomb

for Secretary to His Excellency the Crown Representative.

Ans

S.N.4

8

R.Dis.No.F. 485 -39 Judl. Dated 6th Noon, August/Nov. 39

Enc. 1.

Issue
Issued 27/x
6/11/39

From

The Secretary to the Resident.

To

The Manager, C. & M. Station Branch of the Bank of Mysore, Bangalore.

P.U.C
S.N.1

Reference ~~this~~ your petition dated the 24th July 1939.

2. The Hon'ble the Resident ~~does~~ not propose to interfere with the action of the Registrar of Joint Stock Companies taken under the Indian Companies Act, 1913.

understands that the R.J.S.C. are not now prepared to ask the Bank to file the Statements in question

3. The enclosure to the petition is returned.

Encl. to S.N.1

Secretary to the Resident.

Not to appear in original.

Copy to the Registrar of Joint Stock Companies, Civil and Military Station, Bangalore, for information.

D.S.Rao
9.8.39

S.N.S

THE OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE,

*Bangalore, the* 9th ~~October~~ November *1939*

Issued 9/11/39 Sh

Issue 27/x

R.Dis. No. F. 485-39 Judl.

A copy of the undermentioned paper(s) is forwarded to the Registrar of Joint Stock Companies, Civil and Military Station, Bangalore, for information and guidance.

[for information, ~~in continuation of~~ with reference to the correspondence ending with ~~(this)~~ Memorandum / ~~letter~~ / endorsement from

~~No.~~ ~~dated~~

By order, etc.,

Secretary ~~[Asst. Secy]~~ to the Resident in Mysore.

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List of papers.

S.N. 2 / Cor. p. 5 (H) 1. Letter to the Political Department R.Dis.No.F.485-39/Judl., dated the 16th August 1939.

P.U c / S.N. 3 2. Letter from the Political Department No.F.155-IB/39, dated the 28th September 1939.

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AsRa. 3.x.39